THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 14268 of 2005

ORAL ORDER:

Both the petitioners by the impugned proceedings dated 06.09.2003 and 06.02.2004 respectively were relieved from duty on a permanent basis on medical invalidation. They filed the writ petition assailing the termination on the ground that their medical invalidation from service is contrary to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act No.1 of 1996). Further it is the admitted position that the petitioners are persons with disabilities within the meaning of the provisions of the Act. Section 47 of the Act prohibits any establishment to dispense with or reduce in rank, an employee who acquires a disability during his service. That the petitioners have acquired disability while in the service of APGENCO Limited is also not in contest. The provisos 1 and 2 of Section 47(1) also clearly enjoin that if an employee, after acquiring disability is not suitable for the post he was holding he may be shifted to some other post with the same pay scale and service benefits and if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

The legislation clearly obligates the respondents to continue service benefits to the petitioners who were medically invalidated. Whether they comply with this legislative mandate by employing the petitioner or notionally treating

them as continuing in employment without asking them to work is a matter of administrative choice for the respondents. The inescapable legal obligation is that the respondents are obligated to continue extending the petitioners service benefits to which they were entitled prior to the impugned orders, till the petitioners reach the age of superannuation, unless they are terminated from service prior thereto in accordance with law for an act of misconduct or the like. That is not the case in the matter on hand.

Accordingly, the writ petition is allowed. The respondents shall continue to extend to the petitioners the same pay scale and service benefits they were entitled to prior to the impugned orders till they attain the respective ages of superannuation. The petitioners are however not entitled to claim any appointment for their dependents on companionate basis as such would be in contravention of the prohibition under Article 16(1) of the Constitution. No order as to costs.

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12-12-2005

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